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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,244	04/06/2004	Rainer Herrmann	GMH/416/US	7479
2543	7590	05/22/2007		
ALIX YALE & RISTAS LLP 750 MAIN STREET SUITE 1400 HARTFORD, CT 06103			EXAMINER NGHIEM, MICHAEL P	
			ART UNIT 2863	PAPER NUMBER
			MAIL DATE 05/22/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/820,244	Applicant(s) HERRMANN ET AL.	
	Examiner Michael P. Nghiem	Art Unit 2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2007 and 02 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14-16 and 18-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7, 14-16, 18 and 19 is/are allowed.
- 6) ☒ Claim(s) 8 and 9 is/are rejected.
- 7) ☒ Claim(s) 10-12 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Amendments filed on February 15, 2007 and November 2, 2006 have been acknowledged.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kraszewski et al. (US 5,554,935) in view of Herrmann et al. (US 6,837,122).

Kraszewski et al. discloses an apparatus (Fig. 1) for determining the mass of portioned units of active substances (Abstract, lines 1-2), in particular capsules, tablets or dragees (3), which comprises a microwave generator (column 4, lines 21-22), a microwave resonator (10) arranged to contain a microwave field generated by said microwave generator (column 4, lines 20-22), a device for guiding the units of active substances through the microwave resonator (column 4, line 22), measuring and evaluation electronics (column 4, line 23) for determining the mass (Abstract, lines 1-2) from the

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displacement A of the resonant frequency (displacement between 1 and 2, Fig. 4a) and the broadening B of the resonance curve (left curve is broader than right curve, Fig. 4a) caused by presence of each unit (an object, column 5, lines 62-63) in the microwave field (introduced into the cavity, column 5, line 63) (column 5, lines 62-66), a device for removing individual of the units of active substances (means for separating, column 3, line 65 – column 4, line 2) having a mass outside a predetermined range (column 3, line 67 – column 4, line 2).

However, Kraszewski et al. does not disclose and a second microwave resonator with measuring and evaluation electronics for determining the mass of the units of active substances.

Nevertheless, Herrmann et al. discloses a second microwave resonator (second 15) with measuring and evaluation electronics (each resonator has associated measurement electronics, Abstract, line 4) for the purpose of determining the mass of the units of active substances (Abstract, lines 5-8) before filling (before filling in 14, Fig. 2).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Kraszewski et al. with a second microwave resonator (second 15) with measuring and evaluation electronics as disclosed by

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Herrmann et al. for the purpose of determining the mass of the units of active substances before filling.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kraszewski et al. in view of Herrmann et al. as applied to claim 8 above, and further in view of Mayer et al. (US 5,602,485).

Kraszewski et al. as modified by Herrmann et al., discloses that the devices for guiding the units of active substances have a tube (5) through which the units of active substances are conveyed (Fig. 2).

However, Kraszewski et al. as modified does not disclose the units of active substances are conveyed by an air stream.

Nevertheless, Mayer et al. discloses that the units of active substances (14's) are conveyed by an air stream (Fig. 1) for the purpose of processing the capsules at a high rate of speed (column 1, lines 32-35).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Kraszewski et al. as modified with a conveying air stream as disclosed by Mayer et al. for the purpose of processing the capsules at a high rate of speed.

Reasons For Allowance

The **combination** as claimed wherein the mass M is determined, with compensation of the influence of the moisture (claim 1) or the devices for guiding the units of active substances have an endless belt with depressions, into which the units of active substances are inserted (claims 10, 18) the devices for guiding the units of active substances have a circular disk, on the circumference of which the units of active substances are held firmly with the aid of vacuum (claims 11, 19) is not disclosed, suggested, or made obvious by the prior art of record.

Response to Arguments

Applicant's arguments filed on February 15, 2007 and November 2, 2006 have been fully considered but they are not persuasive in view of the rejections above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Nghiem whose telephone number is (571) 272-2277. The examiner can normally be reached on M-H.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Michael Nghiem', with a stylized flourish extending to the right.

Michael Nghiem

April 30, 2007